

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: November 3, 2009
HEARING TIME: 10:00a.m.
HEARING PLACE: New York City

IN RE

GILBERT GEHLER
RENEE GEHLER

DEBTORS

CHAPTER 7

CASE NO. 09-22265

JUDGE: Robert D. Drain

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362 (d)
DUE TO A LACK OF ADEQUATE PROTECTION (AND A LACK OF EQUITY)
PURSUANT TO 11 U.S.C. §361**

PLEASE TAKE NOTICE that Wells Fargo Bank, N.A., as Trustee, by and through its attorneys, Shapiro & DiCaro, LLP, will move this Court at the United States Bankruptcy Court , One Bowling Green Courtroom 610, New York, NY 10004, on November 3, 2009 at 10:00a.m., or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Bankruptcy Rule 4001 and 11 U.S.C. §362(d), granting Wells Fargo Bank, N.A., as Trustee relief from the automatic stay due to Debtors' inability to provide adequate protection to the interest of Wells Fargo Bank, N.A., as Trustee pursuant to 11 U.S.C. §361; and/or

2. Granting Wells Fargo Bank, N.A., as Trustee such other and further relief as is just and proper.

Dated: September 21, 2009
Rochester, New York



Anne E. Miller-Hulbert
Shapiro & DiCaro, LLP
Attorneys for Wells Fargo Bank, N.A., as Trustee
250 Mile Crossing Boulevard
Suite One
Rochester, NY 14624
(585) 247-9000

TO: Debtors
Gilbert Gehler
10 Sutton Road
Monsey, NY 10977

Renee Gehler
10 Sutton Road
Monsey, NY 10977

Attorney for Debtors
Joshua N. Bleichman
268 Route 49
Spring Valley, NY 10977

Trustee
Mark S. Tulis
Oxman Tulis Kirkpatrick Whyatt & Geiger
120 Bloomingdale Rd
White Plains, NY 10605

U.S. Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)
DUE TO A LACK OF ADEQUATE PROTECTION (AND A LACK OF EQUITY)
PURSUANT TO 11 U.S.C. §361**

Wells Fargo Bank, N.A., as Trustee, by and through its attorneys, Shapiro & DiCaro, LLP, for an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d) and Bankruptcy Rule 4001 due to a lack of adequate protection pursuant to 11 U.S.C. §361, and in support thereof, states as follows:

1. Debtors filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about February 25, 2009.
2. Wells Fargo Bank, N.A., as Trustee is a secured creditor of the Debtors by virtue of a mortgage executed by Debtors on April 21, 2005 and given to Option One Mortgage Corporation securing the repayment of the principal sum of \$520,000.00 due under the Bond/Note and granting Option One Mortgage Corporation a security interest in the Property commonly known as 10 Sutton Rd, Monsey, NY 10952 (the "Property"). Copies of the Mortgage and Bond/Note are annexed hereto as Exhibit "A". The mortgage was assigned to Wells Fargo Bank, N.A., as Trustee for Citigroup Mortgage Loan Trust, Series 2005-OPT4,

Asset Backed Pass-Through Certificates by instrument dated May 31, 2006. A copy of the assignment of mortgage is annexed as Exhibit "B".

3. A copy of the Relief from Automatic Stay – Real Estate and Cooperative Apartment Work Sheet is annexed hereto as Exhibit "C". According to the Work Sheet Movant had a secured claim as of the date of filing in the amount of \$692,857.06.

4. According to the Work Sheet the mortgage is contractually due for December 1, 2006.

5. That the following is due and owing to the secured creditor under the above loan:

6 Defaulted Monthly Payments at \$3,556.51 each (December 2006 through May 2007)	\$21,339.06
6 Defaulted Monthly Payments at \$4,856.02 each (June 2007 through November 2007)	\$29,136.12
6 Defaulted Monthly Payments at \$5,289.19 each (December 2007 through May 2008)	\$31,735.14
6 Defaulted Monthly Payments at \$4,856.02 each (June 2008 through November 2008)	\$29,136.12
6 Defaulted Monthly Payments at \$4,806.20 each (December 2008 through May 2009)	\$28,837.20
4 Defaulted Monthly Payments at \$4,373.03 each (June 2009 through September 2009)	\$17,492.12
6 Late Charges at \$51.89 each (December 2006 through May 2007)	\$311.34
6 Late Charges at \$77.88 each (June 2007 through November 2007)	\$467.28
6 Late Charges at \$86.55 each (December 2007 through May 2008)	\$519.30
6 Late Charges at \$77.88 each (June 2008 through November 2008)	\$467.28
6 Late Charges at \$76.89 each (December 2008 through May 2009)	\$461.34
3 Late Charges at \$68.22 each (June 2009 through August 2009)	\$204.66
Escrow Advances	\$36,887.83
Bankruptcy Attorneys Fees	\$650.00
Filing Fee	\$150.00
Total Delinquencies	<hr/> \$197,794.79

6. According to the Appraisal which is annexed as Exhibit "D", the fair market value of the Property is \$485,000 - \$500,000.

7. Upon information and belief, there is little or no equity in the Property and Wells Fargo Bank, N.A., as Trustee has not been offered adequate protection for its interest in the Property.

8. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. §362 to allow Wells Fargo Bank, N.A., as Trustee to maintain a foreclosure action on its mortgage.

9. Movant specifically waives the requirements of Bankruptcy Code Section 362(e), as the hearing date is scheduled more than thirty days from the date of this motion..

WHEREFORE, Wells Fargo Bank, N.A., as Trustee respectfully requests that an Order be granted vacating the automatic stay as to Wells Fargo Bank, N.A., as Trustee so as to permit the commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, and for such other and further relief as the Court may deem just and proper.

Dated: September 21, 2009



Anne E. Miller-Hulbert
Shapiro & DiCaro, LLP
Attorneys for Wells Fargo Bank, N.A., as Trustee
250 Mile Crossing Boulevard
Suite One
Rochester, NY 14624
(585) 247-9000

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DEBTORS

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)ss:
COUNTY OF MONROE)

I, Shannon Thompson, being sworn, says, I am not a party to this action; I am over 18 years of age, I reside in Rochester, New York.

On September 21, 2009 I served the within Notice of Motion and Motion for Relief From the Automatic Stay upon:

TO: Debtors
Gilbert Gehler
10 Sutton Road
Monsey, NY 10977

Renee Gehler
10 Sutton Road
Monsey, NY 10977

Attorney for Debtor
Joshua N. Bleichman
268 Route 49
Spring Valley, NY 10977

Trustee
Mark S. Tulis
Oxman Tulis Kirkpatrick Whyatt & Geiger
120 Bloomingdale Rd
White Plains, NY 10605

U.S. Trustee-Brooklyn-13
33 Whitehall Street
21st Floor
New York, NY 10004

the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Shannon Thompson
Legal Assistant

Sworn to before me this
21st day of September, 2009,



Notary Public
Anne E. Hulbert
Qualified in Monroe County
Commissions Expires May 31, 2010

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**ORDER GRANTING RELIEF FROM
THE AUTOMATIC STAY**

Upon the Motion of Wells Fargo Bank, N.A., as Trustee dated September 21, 2009 with exhibits attached thereto, with proof of service upon the Trustee, Debtors and Debtors' Attorney and the United States Trustee, and the Motion having come to be heard on November 3, 2009, it is hereby:

ORDERED that the automatic stay in effect pursuant to 11 U.S.C. Section 362(a) is hereby vacated for cause pursuant to 11 U.S.C. Section 362(d) as to Wells Fargo Bank, N.A., as Trustee, its agents, assigns or successors in interest so that Wells Fargo Bank, N.A., as Trustee, its agents, assigns or successors in interest may take any and all actions under applicable state law to foreclose its mortgage on the premises known as 10 Sutton Rd, Monsey, NY 10952, and it is further

ORDERED that the Movant shall immediately provide an accounting to the Trustee of any surplus monies realized as a result of the foreclosure sale.

Dated: _____, 2009
White Plains, NY

Enter:

Honorable Robert D. Drain
United States Bankruptcy Judge